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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 CHARLES D. RIEL,

11 Petitioner,

No. CIV S-01-0507 LKK KJM

12 vs.

DEATH PENALTY CASE

13 ROBERT L. AYERS, Jr.,
14 Warden of San Quentin
State Prison,

15 Respondent.

ORDER

16 _____/
17 On April 22, 2009, the undersigned held a status conference. Robert Bacon and
18 Joan Fisher appeared for petitioner. Paul Bernardino appeared for respondent. The parties
19 discussed preparing for and scheduling an evidentiary hearing. With respect to discovery,
20 respondent first requested that he be permitted to obtain copies of documents in petitioner's trial
21 counsel's files. Respondent pointed out that the court had granted this discovery previously.
22 Several years ago, respondent's counsel reviewed trial counsel's files. He now wishes to make
23 copies of documents from the file. Petitioner opposes the request. He argued that respondent
24 already had the opportunity to review the files and told petitioner's counsel at that time that he
25 did not need copies of any documents from the files.

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1 Respondent made three additional discovery requests: (1) to depose petitioner's
2 experts Dr. Robert Pettis, Dr. Karen Bronk Froming and Charles V. Morton; (2) to depose
3 petitioner; and (3) for access to petitioner's CDC file, including petitioner's medical records.
4 Petitioner objected to all but the first request. Respondent's counsel stated that this oral request
5 would constitute his motion for discovery. Petitioner requested time to file an opposition.

6 The parties also discussed setting a schedule for the remaining pre-evidentiary
7 hearing work, methods for taking testimony, and the conduct of the hearing. At the close of the
8 status conference, the court held an ex parte budgeting conference with counsel for petitioner.

9 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED
10 as follows:

11 1. The court already has found good cause for respondent's discovery of the files
12 of petitioner's trial counsel. See July 14, 2003 Order. Respondent's counsel examined the files
13 at that time, apparently in 2005, to oppose petitioner's request for an evidentiary hearing. Since
14 then, the court has granted in part petitioner's request; it is understandable that respondent may
15 require the opportunity to view again and copy those files. Respondent's request to copy trial
16 counsel's file is granted subject to the November 24, 2003 protective order.

17 2. Because it is unopposed, and for good cause shown, respondent's request to
18 depose petitioner's experts Dr. Robert Pettis, Dr. Karen Bronk Froming and Charles V. Morton is
19 granted.

20 3. With respect to respondent's remaining discovery requests to depose petitioner
21 and for access to petitioner's CDC files, petitioner shall file any brief in opposition by May 22,
22 2009. Respondent shall file any reply brief by June 12, 2009.

23 4. By June 19, 2009, the parties shall file a joint statement which shall:

24 a. propose a date for the evidentiary hearing to begin and estimate its
25 length;

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1 b. propose a timeline for all work to precede the hearing, including any
2 remaining discovery, identification of witnesses and exhibits, filing dates for motions in limine,
3 and any other work counsel anticipates;

4 c. propose a method for taking the testimony of each witness; and

5 d. inform the court whether either party wishes to propose an alternative
6 to the procedure for sealing portions of the evidentiary hearing set out in the court's June 13,
7 2008 and January 30, 2009 orders in Osband v. Ayers, CIV S 97-0152 WBS KJM, and if so
8 suggest a briefing schedule for doing so.

9 DATED: April 28, 2009.

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12 U.S. MAGISTRATE JUDGE
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